

Cristina C. Arguedas (CalBN 87787)  
Email: arguedas@achlaw.com  
Ted W. Cassman (CalBN 98932)  
Email: cassman@achlaw.com  
Raphael M. Goldman (CalBN 229261)  
Email: goldman@achlaw.com  
ARGUEDAS, CASSMAN & HEADLEY, LLP  
803 Hearst Avenue  
Berkeley, CA 94710  
Telephone: (510) 845-3000  
Facsimile: (510) 845-3003

Allen J. Ruby (CalBN 47109)  
Email: allen.ruby@skadden.com  
Jack P. DiCanio (CalBN 138782)  
Email: jack.dicanio@skadden.com  
Patrick Hammon (CalBN 255047)  
Email: patrick.hammon@skadden.com  
SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP  
525 University Avenue, Suite 1100  
Palo Alto, CA 94301  
Telephone: (650) 470-4500  
Facsimile: (650) 470-4570

*Counsel for FedEx Corporation,  
Federal Express Corporation and  
FedEx Corporate Services, Inc.*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	<b>No. CR 14-380 (CRB)</b>
	)	
Plaintiff,	)	<b>FEDEX DEFENDANTS' MOTION TO</b>
	)	<b>CONTINUE THE DATE FOR TRIAL</b>
	)	
v.	)	Date: August 19, 2015
	)	Time: 10:00 a.m.
FEDEX CORPORATION, FEDERAL	)	Hon. Charles R. Breyer
EXPRESS CORPORATION, and FEDEX	)	
CORPORATE SERVICES, INC.,	)	
	)	
Defendants.	)	

1 Defendants FedEx Corporation, Federal Express Corporation and FedEx  
2 Corporate Services, Inc. (collectively, “FedEx”) respectfully — and reluctantly — seek  
3 an order continuing the date for trial in this matter until September 12, 2016. The  
4 continuance is necessary to vindicate FedEx’s Sixth Amendment rights to compel  
5 evidence and prepare its defense.  
6

7 The parties previously stipulated to, and the Court approved, an “aggressive”  
8 pre-trial and trial schedule that called for the trial to begin February 29, 2016, with final  
9 pretrial motions to be filed on September 9, 2015 and heard November 4, 2015. See  
10 Dkt. #68 (scheduling order) & #69 (transcript of January 21, 2015 hearing). Since that  
11 time, FedEx requested and the Court issued pursuant to Federal Rule of Criminal  
12 Procedure 17(c) a number of subpoenas *duces tecum* to various federal and state law  
13 enforcement agencies. Dkt. #81, 85, 98, 105. The subpoenas are designed to obtain  
14 evidence that will be crucial to FedEx’s defense by showing its good-faith cooperation  
15 with law enforcement efforts throughout the period covered by the charges in the  
16 indictment. See Dkt. #88 & 96.  
17

18  
19 Most of the Rule 17(c) subpoenas were issued by the Clerk of the Court on May  
20 19, 2015, and called for compliance by June 15, 2015. Declaration of Cristina C.  
21 Arguedas in Support of Motion to Continue Trial (“Arguedas Decl.”) ¶ 3. FedEx served  
22 the subpoenas on the various agencies, and since that time FedEx counsel has  
23 communicated on a regular basis with counsel for the subpoenaed agencies about the  
24 contours of the agencies’ searches through their files for responsive records. *Id.* ¶¶ 4-5.  
25 FedEx has agreed to periodic extensions of the dates for compliance with the  
26 subpoenas to accommodate the parties’ continuing discussions and the agencies’  
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28

1 ongoing efforts to identify responsive records. *Id.* ¶ 6.

2       As discussed in more detail in counsel's accompanying declaration, a number of  
3 agencies, including each of the subpoenaed federal agencies, have explained that the  
4 searches called for by the subpoenas will take at least several more months to  
5 complete. Arguedas Decl. ¶ 7. These explanations appear reasonable and credible;  
6 the delays arise not from recalcitrance or the agencies' attempts to evade their  
7 obligations, but from the fact that — due to the breadth of the charges in the  
8 superseding indictment in this case — the subpoenas by necessity ask the law  
9 enforcement agencies to dig into records created, in some instances, more than a  
10 decade ago. *Id.* ¶¶ 7-8. Thus, for example, one of the agencies will need to undertake  
11 the time-consuming process of converting old email files into a type that is readable  
12 using today's technology, *id.* ¶ 7(c), and another is exploring options for searching email  
13 records stored pursuant to a "disaster recovery" protocol, *id.* ¶ 7(d). Each of the federal  
14 agencies subpoenaed by FedEx, as well as the Florida Department of Law  
15 Enforcement, has expressed that their records searches will likely take at least until the  
16 middle of September to complete; several of the agencies' searches will take  
17 substantially longer. *Id.* ¶ 7(a)-(e). Other state and local agencies are in the process of  
18 searching their records; some may complete the process before September, but others  
19 likely will not. *Id.* ¶ 7(f).

20       Additionally, the federal agencies have expressed that, once their records  
21 searches are complete, they may assert privileges and refuse to produce certain  
22 records that are otherwise responsive to the subpoenas. *Id.* ¶ 9. It is difficult to  
23 anticipate the shape of any dispute at this point, but the agencies' statements do raise  
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1 the specter of litigation over the agencies' privilege claims. In sum, especially taking  
2 account of the inevitable delays and potential privilege litigation, the process of  
3 obtaining and analyzing all the records to which FedEx is entitled under the Court's  
4 rulings appears likely to continue well into 2016.

5  
6 Finally, leaving aside the subpoenaed agencies, the prosecution in this matter is  
7 still producing substantial quantities of discovery to the defense. On July 22, 2015, the  
8 prosecution produced to FedEx more than 11 gigabytes of data, which included more  
9 than 165,837 pages of documentary records, among other items. *Id.* ¶ 10. FedEx  
10 understands that additional discovery still remains to be produced. *Id.*

11  
12 The present schedule calls for FedEx to file its final pretrial motions on  
13 September 9, 2015, to file motions *in limine* in January 2016, and to begin trial at the  
14 end of February. Docket #68. It cannot be overstated how eager FedEx is to begin the  
15 trial and to defend its good name. But, as further discussed in the accompanying  
16 Supplemental Declaration of Cristina C. Arguedas, filed *in camera* and under seal, the  
17 subpoenaed records are vital defense evidence. It would be unfair — and a violation of  
18 FedEx's Sixth Amendment rights to compel evidence and prepare its defense — to  
19 force FedEx to file its final motions and go to trial without having obtained records that  
20 will support its defenses and answer the Court's questions: "What did FedEx know?  
21 What were they told? What did they do? What did they say?" See Dkt. #53 (9/25/2014  
22 Tx) at 5:8-12 & 22-24; see also Dkt. #69 (1/21/2015 Tx) at 8:20-23, 9:24-10:3, 11:20-  
23 12:16; Dkt. #85 (2/20/2015 Tx) at 11:3-8.

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26 FedEx requests that the Court continue the date for trial until September 12,  
27 2016, and that the pretrial schedule previously entered by the Court, see Dkt. #68, be  
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1 amended as follows:

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3 Expert Disclosures

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5 October 14, 2015 Rebuttal expert disclosures are due

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7 Grand Jury Disclosures

8 June 8, 2016 Remaining grand jury transcripts from the Northern District of  
9 California to be disclosed

10  
11 Motions Round #3

12 April 6, 2016 Motions Round #3 – opening briefs are due

13 May 4, 2016 Motions Round #3 – responsive briefs are due

14 May 18, 2016 Motions Round #3 – reply briefs are due

15 June 1, 2016 Hearing on Motions Round #3

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18 Pretrial and Trial

19 June 8, 2016 Rule 404(b) notice is due

20 June 8, 2016 Prosecution witness list is due

21 June 22, 2016 Defense witness list is due

22 July 27, 2016 Motions in Limine are due

23 August 10, 2016 Motions in Limine oppositions are due

24 August 24, 2016 Motions in Limine replies are due

25 August 24, 2016 Pretrial filings are due

26 August 31, 2016 Pretrial conference

1 September 12, 2016 Jury selection  
2 September 14, 2016 Opening statements

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5 Dated: August 7, 2015

6 Respectfully submitted,

ARGUEDAS, CASSMAN & HEADLEY, LLP

7  
8 By:                     /s/                    

9 Cristina C. Arguedas  
10 803 Hearst Avenue  
11 Berkeley, CA 94710  
12 (510) 845-3000

13 Counsel for FedEx Corporation,  
14 Federal Express Corporation and  
15 FedEx Corporate Services, Inc.  
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